

1  
2  
3  
4  
5  
6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

8 JEROME BROWN, JR.,

9 Plaintiff,

10 v.

11 MEGAN J. BRENNAN, et al.,

12 Defendants.

CASE NO. C19-1331-JLR

REPORT AND RECOMMENDATION

13  
14 Plaintiff Jerome Brown, Jr., appearing *pro se*, filed an application to proceed *in forma*  
15 *pauperis* (IFP) and a proposed civil complaint. (Dkt. 1.) The IFP application is deficient in several  
16 respects, including a lack of clarity as to plaintiff's resources and the inclusion of a different name  
17 in the Written Consent for Payment of Costs portion of the form. Also, plaintiff's proposed  
18 complaint is difficult to decipher and does not appear to include any viable claims or basis for  
19 jurisdiction or venue in this Court. He identifies Maryland as his place of residence, names as  
20 defendants officials, employees, and a division all associated with the United States Post Office  
21 and located in Virginia and the District of Columbia, appears to allege some type of fraud and/or  
22 property damage, and includes documents associated with district court cases and other issues in  
23 the states in which the parties reside. (Dkt. 1-1.)

1           It further appears plaintiff has a history of filing numerous, repetitive, and frivolous  
2 lawsuits in the federal courts across the country. Two of the five cases filed in this Court in the  
3 past year have been dismissed as frivolous, *Brown v. USPS PMG*, C19-0295-RSM (Dkt. 9), and  
4 *Brown v. United States Marshall Service, et al.*, C19-1246-RAJ (Dkt. 11), and his filings reflect  
5 some four different addresses in Virginia and Maryland, *see id.* and *Brown v. Barr, et al.*, C19-  
6 1311-RSM; *Brown v. Robinson, et al.*, C19-1330-JCC; and *Brown v. Brennan, et al.*, C19-1331-  
7 JLR. At least three other district courts have limited plaintiff's ability to file new cases. *See*  
8 *Brown v. Walter, et al.*, C18-0320-RMP (E.D. Wash.) (Dkt. 2) (dismissing action filed without a  
9 filing fee or IFP application in light of litigious history; citing *Brown v. Lyons Mane Partnership*,  
10 No. 10-mc-7 (D. D.C. Mar. 1, 2010) (enjoining plaintiff from proceeding IFP), *aff'd* No. 10-7027  
11 (D.C. Cir. June 7, 2010); *In re: Jerome J. Brown*, Misc. No. 04-465 (D. Md. Dec. 7, 2004)  
12 (deeming plaintiff a frequent litigator and imposing pre-filing restrictions); and *In re Brown*, No.  
13 3:10-cv-00010 (E.D. Va. July 28, 2010) (limiting plaintiff to one lawsuit at a time pending in that  
14 district)).

15           In the current matter, given the location of defendants and contested events, venue is  
16 lacking. *See* 28 U.S.C. § 1391(a), (b) (venue is proper in a judicial district in which the defendants  
17 live or in which the cause of action arose); *Decker Coal Co. v. Commonwealth Edison Co.*, 805  
18 F.2d 834, 842 (9th Cir. 1986) (“A claim arises in any district in which a substantial part of the acts,  
19 events, or omissions occurred that gave rise to the claim.”) When an action is filed in the wrong  
20 venue, a court must either dismiss the action or, when justice so requires, transfer the action to a  
21 different venue. 28 U.S.C. § 1406(a). The interests of justice do not mandate transfer of this case.

22           Under Federal Rule of Civil Procedure 12(h)(3), when it appears subject matter jurisdiction  
23 is lacking, the Court “shall dismiss the action” and may do so on its own initiative. *Munoz v.*

1 *Mabus*, 630 F.3d 856, 860 (9th Cir. 2010); *Csibi v. Fustos*, 670 F.2d 134, 136 n.3 (9th Cir. 1982).  
2 An action may be dismissed for lack of subject matter jurisdiction, without leave to amend, when  
3 it is clear the jurisdictional deficiency cannot be cured by amendment. *May Dep't Store v. Graphic*  
4 *Process Co.*, 637 F.2d 1211, 1216 (9th Cir. 1980). "A pro se litigant must be given leave to amend  
5 his or her complaint unless it is absolutely clear that the deficiencies of the complaint could not be  
6 cured by amendment." *Karim-Panahi v. L.A. Police Dep't*, 839 F.2d 621, 623 (9th Cir. 1988)  
7 (internal quotation marks and sources omitted). Further, pursuant to 28 U.S.C. § 1915(e)(2)(B),  
8 this Court may deny an application to proceed IFP and should dismiss a complaint if it is frivolous  
9 or fails to state a claim upon which relief may be granted. An action is frivolous if "it lacks an  
10 arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

11 Plaintiff fails to plead sufficient allegations to show a proper basis for a federal court to  
12 assert subject matter jurisdiction over the action. *See McNutt v. General Motors Acceptance Corp.*,  
13 298 U.S. 178, 189 (1936). Considering both plaintiff's submissions in the current case and his  
14 litigation history, there is no reasonable basis for concluding the jurisdictional deficiency could be  
15 cured by amendment. Further, given that this action appears frivolous and fails to state a claim  
16 upon which relief may be granted, it is subject to dismissal under 28 U.S.C. § 1915(e)(2)(B).

17 Because of the deficiencies in the IFP application and proposed complaint, the request to  
18 proceed IFP should be DENIED and this case DISMISSED without prejudice. 28 U.S.C. §  
19 1915(e)(2)(B), and Fed. R. Civ. P. 12(h)(3). A proposed order of dismissal accompanies this  
20 Report and Recommendation.

#### 21 DEADLINE FOR OBJECTIONS

22 Objections to this Report and Recommendation, if any, should be filed with the Clerk and  
23 served upon all parties to this suit within **fourteen (14) days** of the date on which this Report and

1 Recommendation is signed. Failure to file objections within the specified time may affect your  
2 right to appeal. Objections should be noted for consideration on the District Judge's motions  
3 calendar for the third Friday after they are filed. Responses to objections may be filed within  
4 **fourteen (14) days** after service of objections. If no timely objections are filed, the matter will be  
5 ready for consideration by the District Judge on **September 13, 2019**.

6 DATED this 29th day of August, 2019.

7 

8 Mary Alice Theiler  
9 United States Magistrate Judge  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23